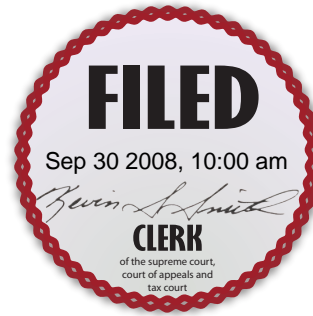


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

SHAUN LONG,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0802-CR-142

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Rebekah Pierson-Treacy, Judge
Cause No. 49F19-0707-CM-143089

September 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Shaun Long (“Long”) appeals his conviction for resisting law enforcement as a Class A misdemeanor, raising the following restated issue: whether there is sufficient evidence that Long forcibly resisted arrest to support his conviction for resisting law enforcement.

We affirm.

FACTS AND PROCEDURAL HISTORY

Long and his then-girlfriend, Anne Marie Robusek, were in the gallery section of Marion County Criminal Courtroom 10, waiting for Robusek’s case to be called. Long and Robusek were talking while court was in session and were asked on several occasions by Marion County Sheriff’s Deputy Corporal Damon Love to refrain from talking while court was in session. Ultimately, Corporal Love asked the two to leave the courtroom and followed them into the hallway. Upon leaving the courtroom, Long became belligerent and began speaking loudly, using profanity and gesturing wildly, all within a foot of Corporal Love. When Corporal Love asked Long to calm down, Long assumed a defensive posture toward him, which Corporal Love interpreted as Long preparing to assault him, and then Long turned to walk away. Corporal Love asked Long not to walk away, but Long continued. Corporal Love then attempted to detain Long by grabbing his arm.

After Corporal Love grabbed Long’s arm, Long quickly snatched his arm from Corporal Love, “with force.” *Tr.* at 21. Corporal Love pushed Long up against the wall and used his radio to call for help. Long continued to be verbally combative, to attempt to turn around, to walk away, and kept turning his head. Two or three deputies were required to handcuff Long, who had to be placed on the ground in order to cuff him. As the officers took Long in the elevator to the J-Tank, Long continued to turn his head, yell, and kick his feet

backwards in the direction of the officers. At least three officers drew their tasers from their holsters before Long became compliant.

Long was charged with one count of resisting law enforcement and one count of disorderly conduct. At the conclusion of Long's bench trial, the trial court found Long guilty of resisting law enforcement as a Class A misdemeanor, and not guilty of disorderly conduct. The trial court sentenced Long to time served, which was sixteen days actual time, and sixteen days good time.

DISCUSSION AND DECISION

Long claims that the evidence is insufficient to sustain his conviction of resisting law enforcement. More specifically, he claims that there is insufficient evidence that he acted with force when he resisted the officers.

Ind. Code §35-44-3-3(a)(1) provides as follows:

A person who knowingly or intentionally . . . forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer's duties . . . commits resisting law enforcement, a Class A misdemeanor.

We begin our analysis by acknowledging that, "a private citizen may not use force in resisting arrest by an individual who he knows, or has reason to know is a police officer performing his duties regardless of whether the arrest in question is lawful or unlawful." *Howell v. State*, 782 N.E.2d 1066, 1067-68 (Ind. Ct. App. 2003). Additionally, we are mindful that when reviewing the sufficiency of the evidence we will not reweigh the evidence or reassess the credibility of the witnesses, but will consider only the evidence most

favorable to the judgment, along with all reasonable and logical inferences to be drawn therefrom. *See Moore v. State*, 869 N.E.2d 489, 492 (Ind. Ct. App. 2007).

The forcible nature of the alleged resistance, obstruction, or interference is an essential element of the misdemeanor offense of resisting law enforcement; therefore, the State is required to prove that element at trial. *Miller v. State*, 634 N.E.2d 57, 60 (Ind Ct. App. 1994). Proof of force may include the defendant's refusal to arise or move where directed, so as to require officers to forcibly move the defendant from one place to another or to lift him onto his feet. *See Johnson v. State*, 833 N.E.2d 516, 518-19 (Ind. Ct. App. 2005). h
Spangler v. State, 607 N.E.2d 720, 724 (Ind. 1993), our Supreme Court found that the evidence was not sufficient to support a defendant's conviction of forcibly resisting law enforcement absent any evidence of strength, power, or violence or any movement or threatening gesture directed toward the law enforcement official. Later, in *Ajabu v. State*, 704 N.E.2d 494, 495 (Ind. Ct. App. 1998), a panel of this court found that the evidence was insufficient to establish that the defendant acted forcibly, where the defendant did nothing more than stand his ground. In *Ajabu*, the evidence of resistance was the defendant's refusal to release a flag to the police officer, twisting and turning a little as he held on to the flag. *Id.* at 496.

In *Guthrie v. State*, 720 N.E.2d 7, 9 (Ind. Ct. App. 1999), *trans. denied* (2000), a panel of this court disagreed with Guthrie's argument that he passively resisted arrest and found that sufficient evidence existed to sustain his conviction for forcibly resisting arrest. There, Guthrie was arrested and transported to lockup where he refused to exit the vehicle, and refused to stand after he was physically removed from the vehicle. Guthrie leaned back and

kept his legs straight, forcing the officers to carry him to the receiving area. We held that Guthrie applied some force requiring the officers to exert force to counteract Guthrie's acts of resistance. *Id.* at 8. Likewise, in *Johnson*, 833 N.E.2d at 518-19, this court affirmed the defendant's conviction based on the defendant's acts of turning and pushing away from the officers and stiffening up when the officers attempted to place him into a transport vehicle. In *Johnson*, this court acknowledged that the definition of "forcibly resist" as defined in *Spangler*, was "moderated," or relaxed. *Id.* at 519.

Here, Corporal Love testified that when he grabbed Long's arm in order to prevent him from walking away, Long snatched his arm away with force. When Corporal Love pushed Long into the wall in an attempt to handcuff him, Long kept moving his head, trying to turn around, and trying to walk away from Corporal Love. Once on the ground, it required two to three officers to handcuff Long. Although Corporal Love's conduct throughout this episode raises certain questions, we find that this evidence is sufficient to sustain Long's conviction of resisting law enforcement.

Affirmed.

VAIDIK, J., and CRONE, J., concur.